

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMPIRE TODAY, LLC)	
Plaintiff,)	
)	
v.)	
)	No. 08 CV 1683
Luna Carpet and Blinds Co., Inc.)	Judge Gottschall
)	Magistrate Judge Denlow
Defendant.)	
)	
)	
)	

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiffs, EMPIRE TODAY, LLC ("Empire" or "Empire Today"), by and through its attorneys, Wildman, Harrold, Allen & Dixon LLP, for its First Amended Complaint against Defendant, Luna Carpet and Blinds Co., Inc. ("Luna"), states as follows:

THE PARTIES

1. Empire is a Delaware limited liability company with its principal place of business in Northlake, Illinois. Empire Today is engaged in the business of , *inter alia*, selling and installing carpet, flooring and home improvement products.

2. Luna is an Illinois corporation with its principal place of business in Bellwood, Illinois. Luna also is engaged in the business of selling and installing carpet, flooring and other home improvement products

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 by reason of Plaintiff's claims of unfair competition under the Lanham Act, 15 U.S.C. § 1114 *et seq.* and pendent jurisdiction under 28 U.S.C. § 1367(a).

4. This Court has personal jurisdiction over Empire and Luna because they are doing business in Illinois and offer products and services for sale in Illinois.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

FACTS

The Parties

6. Empire is a home improvement company that sells and installs carpet, flooring and window treatments. Empire has used the Empire name and service mark, since at least as early as 1959.

7. Empire is the owner of United States Trademark Registration Number 2,516,389 for the service mark EMPIRE. The EMPIRE mark is registered for use in connection with telephone shop-at-home services in the field of carpeting and installation of carpets.

8. Empire is also the owner of United States Trademark Registration Number 3,090,137 for the service mark EMPIRE CARPET. The EMPIRE CARPET mark is registered for use in connection with shop-at-home, retail store and on-line retail store services in the fields of carpeting and flooring and installation services in the fields of carpeting and flooring. Empire has used this mark in commerce, since at least as early as April 5, 1973.

9. Luna is a home improvement company that sells and installs carpet and flooring in the Chicagoland area.

Google's Adword Program

10. Google offers a service in which customers may arrange for their advertisements to appear on Google's website in response to a search query. Google calls its advertising program "Adwords."

11. Google's customers can purchase words that, if entered by a user, will return search results that include a section at the beginning of the user's search results titled "Sponsored Links." The "Sponsored Links" section lists websites by owners who have paid to appear in the Sponsored Links section, together with a limited amount of advertising text.

Luna's Wrongful Activity

12. Empire recently became aware that a search on Google's website using the search terms "Empire Carpet" returns various listings for Luna's web site and various advertisements for Luna in the top position of the "Sponsored Links" section directing consumers looking for Empire's website to Luna's website.

13. The advertisements that appear uses the Empire name and service mark within the text of the advertisement. *See, e.g.,* Exhibit A.

14. Upon information and belief, Luna has purchased Empire's registered service mark EMPIRE CARPET as a keyword through Google's Adword program.

15. Luna's purchase of Empire's registered mark constitutes use in commerce of the EMPIRE CARPET mark. *See, e.g., Internat'l Profit Assoc., Inc. v. Paisola*, 461 F. Supp. 2d 672, 677 (N. D. Ill. 2006).

16. Luna's use of Empire's name within the text of its advertisement on Google also constitutes a use in commerce of Empire's name and registered service mark. *Id.*

17. On February 19, 2008, shortly after Empire learned of Luna's activities described herein, Empire sent a cease and desist letter to Luna requesting that Luna cancel its subscription with Google for the Adwords EMPIRE CARPET. Exhibit B.

18. On March 13, 2008, Luna's counsel responded to the letter indicating that Luna would not stop its unlawful activity. Exhibit C.

COUNT I

**Violation of the Lanham Act
15 U.S.C. § 1114**

19. Empire realleges and incorporates by reference herein the preceding paragraphs 1- 17 as though fully alleged herein.

20. Empire holds a number of registered service marks in reference to its business name. These include United States registration number 3,090,137 for the service mark EMPIRE CARPET and United States Registration Number 2,516,389 for the service mark EMPIRE.

21. Luna is using in commerce the registered mark and the confusingly similar mark in connection with the advertising of its goods and services.

22. Luna's use of Empire's marks is likely to cause confusion, mistake and deception of the public.

23. Luna's use of Empire's marks as an Adword and within the text of its advertising creates initial interest confusion, dilutes the value of Empire's marks and constitutes trademark infringement that is likely to cause confusion, mistake, or deception amongst the consuming public that is being directed to Luna's website and business, when in fact it was looking for Empire's website.

24. The foregoing actions are illegal under the provisions of 14 U.S.C. § 1114.

25. The foregoing actions have been committed with the intent to mislead and misdirect consumers.

26. Empire is being damaged by this conduct and is without an adequate remedy at law to compensate it for Luna's wrongful acts.

COUNT II

**Violation of the Lanham Act
15 U.S.C. § 1125 (a)(1)**

27. Empire incorporates the allegations of paragraphs 1-24 as if fully restated herein.

28. Section 1125(a)(1)(B) of the Lanham Act provides in pertinent part:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

....

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

29. In its advertising Luna falsely claims that it "has more choice than Empire." Exhibit A.

30. Upon information and belief, the statement that Luna has more choice than Empire is false and misleading to consumers.

31. In its advertising Luna makes the false claim that its pricing is 50% cheaper than Empire's pricing. Exhibit A.

32. Specifically, the claim is "Save Over Empire at Luna. Love Your Carpet/Love Your Floor! Save 50% & Low Price Guarantee." Exhibit A.

33. Luna's false statements are intentionally misleading to consumers.

34. Luna's false statements about Empire in Luna's advertising is causing damage to Empire and Empire is without an adequate remedy at law to compensate it for Luna's false statements.

COUNT III

Violation of the Illinois Uniform Deceptive Trade Practices Act

35. Empire incorporates the allegations of paragraphs 1-33 as if fully restated herein.

36. Luna violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq. by, *inter alia*, purchasing the EMPIRE CARPET mark as an Adword from Google, using the EMPIRE CARPET mark to divert customers from Empire's website to Luna's, and using the EMPIRE mark in Luna's advertising in a manner that is likely to create a likelihood of confusion.

37. In addition, Luna has violated the Illinois Uniform Deceptive Trade Practices Act by, *inter alia*, intentionally and falsely stating that that it has more choice than Empire.

38. Empire is being damaged by this conduct and is without an adequate remedy at law to compensate it for Luna's wrongful acts.

COUNT IV

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act

1. Empire incorporates the allegations of paragraphs 1-37 as if fully restated herein.

2. Defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/12 et seq. by, *inter alia*, purchasing the EMPIRE CARPET

mark as an Adword from Google, using the EMPIRE CARPET mark to divert customers from Empire's website to Luna's, and using the EMPIRE mark in Luna's advertising in a manner that is likely to create a likelihood of confusion amongst consumers.

3. In addition, Luna has violated the Illinois Consumer Fraud and Deceptive Business Practices Act by, *inter alia*, intentionally and falsely stating that it has more choice than Empire.

4. Empire is being damaged by this conduct and is without an adequate remedy at law to compensate it for Luna's wrongful acts.

WHEREFORE, Empire prays that this Court:

(i) enter judgment in favor of Empire and against Luna on Counts I through IV;

(ii) grant a temporary and permanent injunction against Defendants enjoining them from:

- a) continuing to own the EMPIRE CARPET mark or any confusingly similar mark as a keyword through any internet search engine;
- b) continuing to unlawfully use the EMPIRE mark and name in any of its advertising;
- c) continuing to make false statements about Empire or its products or services;
- d) otherwise violating the Illinois Consumer Fraud and Deceptive Business Practices Act; and
- e) otherwise violating the Illinois Uniform Deceptive Trade Practices Act;

(iii) award Empire damages in an amount not less than \$75,000 to be proven at trial;

(iv) award Empire exemplary damages in an amount to be proven at trial;

- (v) award Empire its costs and attorneys' fees; and
- (vi) award Empire such other relief as the Court deems just and necessary.

DEMAND FOR JURY TRIAL

Empire hereby demands trial by jury of all issues triable of right by jury.

Date: April 2, 2008

Respectfully submitted,

EMPIRE TODAY, LLC

By: /s/John S. Letchinger
One of Its Attorneys

John S. Letchinger
Sandra S. Pedersen
WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 201-2000

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMPIRE TODAY, LLC
Plaintiff,


v.

Luna Carpet and Blinds Co., Inc.
Defendant.

No.

08CV1683 EDA
JUDGE GOTTSCHALL
MAGISTRATE JUDGE DENLOW

EXHIBIT A

Web Images Maps News Shopping Gmail more 

[Sign in](#)

Google

empire carpet

Search

[Advanced Search](#)
[Preferences](#)

Web Video

Results 1 - 10 of about 265,000 for **empire carpet**. (0.22 seconds)

Save Over **Empire At Luna**

www.Luna.com Love Your **Carpet**/Love Your Floor! Save 50% & Low Price Guarantee.

Sponsored Links

Sponsored Links

Carpet - Home Depot

www.HomeDepot.com Find all the Top Brands of **Carpet** at Home Depot. Hurry, Shop Now!

Empire Today

www.empiretoday.com 50% Off Select Products No Payments until April 2009!

Ebook Reveals **Carpet Scam**

Shocking Truth told by insider book
Discover tips & tricks to save big!
www.floorcoveringsecrets.com

Empire Carpet

Carpet Pros In Your Area.
Fast Service. Free Quote!
Flooring.EveryContractor.com

Empire Today - Home

Read what our customers have to say about their **Empire Carpet** and **Empire Flooring** experiences at <http://carpetstories.empiretoday.com> and ...
www.empiretoday.com/ - 37k - [Cached](#) - [Similar pages](#)

[Carpet](#)

[Careers](#)

[Hard Surface Flooring](#)

[Custom Windows](#)

[More results from empiretoday.com »](#)

Complaints Board | Empire Carpet

I do home inspections, and I can't tell you how many complaints I hear and see about **Empire Carpet**. **Carpet** is thin and the installation is often substandard, ...
www.complaintsboard.com/complaints/empire-carpet-c9297.html - 55k - [Cached](#) - [Similar pages](#)

Empire Today - Wikipedia, the free encyclopedia

In 2007, The Montel Williams Show selected **Empire Today** to **carpet** the television ...
"Empire Carpet Ads, Getting the Burnt Popcorn Smell of out Microwaves", ...
en.wikipedia.org/wiki/Empire_Today - 45k - [Cached](#) - [Similar pages](#)

Mike \$BIG (Bs Lookout » Blog Archive » Home Depot Carpet vs Empire Carpet

I work with **Empire Carpet** in Indianapolis. I have been with them for 6 months now and I am very happy with what I do and the service I provide. ...
www.belshe.com/2007/07/18/home-depot-carpet-vs-empire-carpet/ - 46k - [Cached](#) - [Similar pages](#)



YouTube - Empire carpet jingle

Filter videos that may not be suitable for minors Note: some ... - 9 sec -
www.youtube.com/watch?v=PeucAM82UGA

Empire Carpet Ads, Getting the Burnt Popcorn Smell of out ...

A: WE CALLED **EMPIRE** FOR YOUR ANSWER AND IT SAYS, THE **EMPIRE CARPET MAN** IS LYNN HAULDREN AND HE'S NOT THE OWNER OF THE COMPANY, HE'S AN ACTOR THAT'S BEEN ...
www.nbc4.com/money/2156700/detail.html - 61k - [Cached](#) - [Similar pages](#)

Empire Carpet Poor Service - Empire Today consumer complaint

A consumer complaint about **Empire Today** - Poor Service.
www.thesqueakywheel.com/complaints/2007/MAY/complaint13460.cfm - 13k - [Cached](#) - [Similar pages](#)

Rip-off Report: Empire Carpet, Empire Today Workers installed ...

Empire Carpet, Empire Today Workers installed wrong color carpet, broke kitchen countertop, installers spoke no english Cinnaminson New Jersey.
www.ripoffreport.com/reports/0/256/RipOff0256990.htm - 56k - [Cached](#) - [Similar pages](#)

empire carpet - Offers for empire carpet - exporters ...

empire carpet supplier directory - over 3000000 registered importers and exporters. **empire carpet** suppliers from China and around the world, **empire carpet** ...
www.tradekey.com/ks-empire-carpet/ - 79k - [Cached](#) - [Similar pages](#)



empire carpet

Search

Advanced Search
Preferences

Web Video

Results 1 - 10 of about 263,000 for **empire carpet** (0.23 seconds)

Sponsored Links

Sponsored Links

Huge Sale at Luma Carpet

www.luma.com 1/25-3/16 Save 50% w/ Low Price Guarantee. In Home Consultation!

Carpet - Home Depot

www.HomeDepot.com Find all the Top Brands of Carpet at Home Depot. Hurry. Shop Now!

Empire Today

www.empiretoday.com 50% Off Select Products No Payments until April 2009!

Empire Today - Home

Read what our customers have to say about their Empire Carpet and Empire Flooring experiences at <http://carpetstories.empiretoday.com> and ...

www.empiretoday.com/ - 37k - [Cached](#) - [Similar pages](#)

[Carpet](#)

[Carpet](#)

[Hard Surface Flooring](#)

[Custom Windows](#)

[More results from empiretoday.com »](#)

Complaints Board | Empire Carpet

I do home inspections, and I can't tell you how many complaints I hear and see about Empire Carpet is thin and the installation is often substandard, ...

www.complaintsboard.com/complaints/empire-carpet-c3297.html - 55k - [Cached](#) - [Similar pages](#)

Empire Today - Wikipedia, the free encyclopedia

In 2007, The Montel Williams Show selected Empire Today to carpet the television ...

en.wikipedia.org/wiki/Empire_Today - 45k - [Cached](#) - [Similar pages](#)

Mike's Lookout » Blog Archive » Home Depot Carpet vs Empire Carpet

I work with Empire Carpet in Indianapolis. I have been with them for 6 months now and I am very happy with what I do and the service I provide. ...

www.belshe.com/2007/07/18/home-depot-carpet-vs-empire-carpet/ - 46k - [Cached](#) - [Similar pages](#)

YouTube - Empire carpet jingle

Filter videos that may not be suitable for minors Note: some ...

www.youtube.com/watch?v=PauCAM82UGA



Empire Carpet Ads, Getting the Burnt Popcorn Smell of out ...

A: WE CALLED EMPIRE FOR YOUR ANSWER AND IT SAYS, THE EMPIRE CARPET MAN

1. I VOUCH FOR THE ADVERTISING NOT BE OWNED BY THE COMPANY. I VOUCH ALL A GOOD

Ebook Reveals Carpet Scam
Shocking Truth told by insider book
Discover tips & tricks to save big!
www.floorcoverhigsecrets.com

Empire Carpet

Carpet Pros In Your Area.
Fast Service. Free Quote!
Flooring.EveryContractor.com

Google

empire carpeting

Search

Advanced Search
Preferences

Web

Results 1 - 10 of about 357,000 for **empire carpeting**. (0.20 seconds)

More Choice Than Empire

[www.luna.com](#) Luna Flooring Galleries Chicagoland's Flooring Superstore

Carpeting - Home Depot

[www.homedepot.com](#) Find all the Top Brands of Carpet at Home Depot. Hurry. Shop Now!

Empire Today - Home

Read what our customers have to say about their **Empire Carpet** and **Empire Flooring** experiences at <http://carpetstories.empiretoday.com> and ...

[www.empiretoday.com/](#) - 37k - [Cached](#) - [Similar pages](#)

[Carpet](#)

[Careers](#)

[Hard Surface Flooring](#)

[Custom Windows](#)

[More results from empiretoday.com »](#)

Complaints Board | Empire Carpet

No home inspections, and I can't tell you how many complaints I hear and see about **Empire Carpet** is thin and the installation is often substandard. ...

[www.complaintsboard.com/complaints/empire-carpet-c9297.html](#) - 55k - [Cached](#) - [Similar pages](#)

[Cached](#) - [Similar pages](#)

Complaints Board | Empire Carpet

Dec 21, 2006 ... **Empire Carpet** Complaints: Bait and switch, terrible service and products quality!

[www.complaintsboard.com/?searchcl=3187](#) - 59k - [Cached](#) - [Similar pages](#)

Up-off Report: Empire Carpet, Empire Today Workers installed ...

Empire Carpet, Empire Today Workers installed wrong color carpet, broke kitchen spuntertop, installers spoke no english Cinnaminson New Jersey.

[www.rpoffreport.com/reports/0/256/RipOff0256590.htm](#) - 56k - [Cached](#) - [Similar pages](#)

Empire Carpet Stories

Empire Today: Empire Carpet Stories - Read what customers have to say about their experience purchasing carpet from **Empire Today**. ...

[carpetstories.empiretoday.com/](#) - 34k - [Cached](#) - [Similar pages](#)

Professional Carpet Cleaning Services of Greater Long Island, New York

Professional Carpet Cleaner, Long Island, Nassau County, New York: **Carpet**, upholstery, truck mount, Home and commercial. We use the Rotovac PowerWand for ...

[www.empiremagiccarpetcleaners.com/](#) - 15k - [Cached](#) - [Similar pages](#)

Empire Carpet & Wood Floor Care, Inc

Sponsored Links

Sponsored Links

Carpet Tiles

Premium quality from 19¢ sq. ft.
Extra heavy tiles, no glue needed
[www.carpet-usa.com](#)

Flooring at SEARS®

Shop Huge Selection of Quality & Dependable Tools at Official Site!
[www.SEARS.com](#)

Empire Today

50% Off Select Products
No Payments until April 2009!
[www.empiretoday.com](#)

Empire Carpeting

Carpeting Pros In Your Area.
Fast Service. Free Quote!
[Flooring.EveryContractor.com](#)

Google

empire carpet

Search

Advanced Search
Preferences

Web

Results 1 - 10 of about 265,000 for **empire carpet** (0.07 seconds)

[Luna Flooring Galleries](#)

[www.luna.com](#) More Choice Than Empire Chicagoand's Flooring Superstore

[Carpet - Home Depot](#)

[www.HomeDepot.com](#) Find all the Top Brands of Carpet at Home Depot. Hurry, Shop Now!

[Empire Today](#)

[www.empiretoday.com](#) 50% Off Select Products No Payments until April 2009!

[Empire Today - Home](#)

Read what our customers have to say about their Empire Carpet and Empire Flooring experiences at <http://carpetstories.empiretoday.com> and ...

[www.empiretoday.com/ - 37k - Cached - Similar pages](#)

[Carpet](#)

[Careers](#)

[Hard Surface Flooring](#)

[Custom Windows](#)

[More results from empiretoday.com »](#)

[Complaints Board | Empire Carpet](#)

Read home inspections, and I can't tell you how many complaints I hear and see about

[Empire Carpet](#) is thin and the installation is often substandard, ...

[www.complaintsboard.com/complaints/empire-carpet-c9297.html - 55k -](#)

[Cached - Similar pages](#)

[Mike's Lookout » Blog Archive » Home Depot Carpet vs Empire Carpet](#)

I work with Empire Carpet in Indianapolis. I have been with them for 6 months now and I am

very happy with what I do and the service I provide. ...

[www.belshe.com/2007/07/18/home-depot-carpet-vs-empire-carpet/ - 46k -](#)

[Cached - Similar pages](#)

[Empire Carpet Ads: Getting the Burnt Popcorn Smell of out ...](#)

WE CALLED EMPIRE FOR YOUR ANSWER AND IT SAYS, THE EMPIRE CARPET MAN

IS LYNN HAULDREN AND HES NOT THE OWNER OF THE COMPANY, HES AN ACTOR

THAT'S BEEN ...

[www.nbc4.com/money/2156700/detail.html - 61k - Cached - Similar pages](#)

[Empire Carpet Poor Service - Empire Today consumer complaint](#)

A consumer complaint about Empire Today - Poor Service.

[www.thesqueakywheel.com/complaints/2007MAY/complaint13460.cfm - 13k -](#)

[Cached - Similar pages](#)

[View consumer complaints posted on TheSqueakyWheel.com](#)

No Declaration in Dominion. [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#) [Empire Carpet](#)

Sponsored Links

Sponsored Links

Carpets

All kind of top quality carpets at discount price with free shipping.

[www.rugstormydoor.com](#)

Illinois

Z Dirty Little Secrets

Ebook reveals how to avoid scams Discover tips & tricks to save big!

[www.floorcoveringsecrets.com](#)

Empire Carpet

Carpet Pros In Your Area. Fast Service. Free Quote!

[Flooring.EveryContractor.com](#)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMPIRE TODAY, LLC

Plaintiff,

V.

Luna Carpet and Blinds Co., Inc.

Defendant.

No.

08CV1683

EDA

JUDGE GOTTSCHALL

MAGISTRATE JUDGE DENLOW

EXHIBIT B

Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229
312-201-2000
312-201-2555 fax
www.wildmanharrold.com



John S. Letchinger
312-201-2698
letchinger@wildman.com

Wildman Harrold
Attorneys and Counselors

February 19, 2008

VIA FEDERAL EXPRESS

Mr. Morris De Zara
President
Luna Carpet & Blinds Co., Inc.
10 Davis Road
Bellwood, IL 60104

Re: Empire Today, LLC
Our Ref. E0187.4

Dear Mr. De Zara:

We represent Empire Today, LLC ("Empire Today") with respect to intellectual property and litigation matters. We recently became aware that Luna Carpet & Blinds Co., Inc. ("Luna") has purchased Empire Today's registered trademark EMPIRE CARPET as an adword from both Yahoo! and Google. As you can see from the attached printouts, Luna appears as the top sponsored link after searching for the words "Empire Carpet."

Empire Today owns a federal trademark registration for the trademark EMPIRE CARPET (Registration Number 3,090,137). Empire Today has used the mark in interstate commerce since at least as early as April of 1973. Additionally, Empire Today owns several other federal trademark and service mark registrations that contain the word EMPIRE ("Empire Marks").

Luna's purchase of the adword EMPIRE CARPET was meant to suggest to consumers that Luna is somehow affiliated with or a distributor of Empire Today. Empire Today does not permit others to use the Empire Marks in a way that is likely to cause confusion among the public.

Mr. Morris De Zara
February 19, 2008
Page 2



Luna's unauthorized use of Empire's Marks as above described constitutes unfair competition in violation of the federal trademark law, also known as The Lanham Act, as well as the common law and trademark statutes of various states. The unauthorized use could subject Luna to injunctive relief, damages, including punitive damages, and attorneys fees. Accordingly, demand is hereby made upon Luna to cease and desist from any further use of the Empire Marks in any manner that suggests Luna is affiliated with Empire Today.

Empire Today demands that Luna immediately contact all appropriate search engines to cancel any purchase of an Empire Mark as an adword.

This is a very serious matter, and Empire Today intends to vigorously pursue protection of its trademarks and consumers. We request that Luna provide Empire Today, through me, with written confirmation of Luna's compliance with the stated demand immediately. If we do not receive confirmation, we will seek injunctive relief in court without any further notice to Luna.

Please let us have the requested assurances no later than February 27, 2008.

Sincerely,



John Letchinger

JSL:SSP

Web Images Maps News Shopping Gmail more ▾

Sign in

Google

empire carpet

Search

Advanced Search
Preferences

Web Video

Results 1 - 10 of about 251,000 for empire carpet. (0.15 seconds)

→ **Luna Carpet & Floor sale**
www.Luna.com Love Your **Carpet**/Love Your Floor! Save 50% & Low Price Guarantee.

Sponsored Links

Sponsored Links

Empire Today
www.empiretoday.com 50% Off Select Products During Our Sale! (1/28/08-3/9/08)

Empire Carpet
Carpet Pros In Your Area.
Fast Service. Free Quote!
Flooring.EveryContractor.com

Empire Today - Home

Empire Today, LLC is America's largest Shop-at-Home service featuring **Carpet**, Berber **Carpet**, Window Treatments, Windows, Siding, Hard Surface Flooring, ...
www.empiretoday.com/ - 36k - Cached - Similar pages

[Carpet](#)
[Schedule an In-home Estimate](#)
[Window Treatments](#)

[Careers](#)
[Information Center](#)

More results from empiretoday.com »

Complaints Board | **Empire Carpet**

I do home inspections, and I can't tell you how many complaints I hear and see about **Empire Carpet**. **Carpet** is thin and the installation is often substandard, ...
www.complaintsboard.com/complaints/empire-carpet-c9297.html - 52k -
Cached - Similar pages

Complaints Board | **Empire Carpet**

Dec 21, 2006 ... **Empire Carpet** Complaints: Bait and switch, terrible service and products quality!
www.complaintsboard.com/?searchcl=3187 - 56k - Cached - Similar pages
More results from www.complaintsboard.com »

Mike's Lookout » Blog Archive » Home Depot **Carpet** vs **Empire Carpet**

I work with **Empire Carpet** in Indianapolis. I have been with them for 6 months now and I am very happy with what I do and the service I provide. ...
www.belshe.com/2007/07/18/home-depot-carpet-vs-empire-carpet/ - 34k -
Cached - Similar pages

Rip-off Report: **Empire Carpet**, **Empire Today** Workers installed ...

Empire Carpet, **Empire Today** Workers installed wrong color **carpet**, broke kitchen countertop, installers spoke no english Cinnaminson New Jersey.
www.ripoffreport.com/reports/0/256/RipOff0256990.htm - 56k - Cached - Similar pages

empire carpet - Offers for empire carpet - exporters ...

empire carpet supplier directory - over 3000000 registered importers and exporters.
empire carpet suppliers from China and around the world, empire carpet, ...
www.tradekey.com/ks-empire-carpet/ - 77k - Cached - Similar pages

YouTube - **Empire carpet** jingle
5 clicks from http://www.google.com/search?hl=en&q ...

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMPIRE TODAY, LLC

Plaintiff,

v.

Luna Carpet and Blinds Co., Inc.

Defendant.

No.

08CV1683

EDA

JUDGE GOTTSCHALL

MAGISTRATE JUDGE DENLOW

EXHIBIT C

M U C H S H E L I S T

ATTORNEYS AT LAW
191 N. WACKER DRIVE
SUITE 1800
CHICAGO, IL 60606.1615

T 312.521.2000
F 312.521.2200

www.muchshelist.com

DIRECT DIAL:
312.521.2424
dliutikas@muchshelist.com

March 13, 2008

VIA FACSIMILE AT 312-201-2555

John S. Letchinger, Esq.
Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229

Re: Your letter dated February 19, 2008

Dear Mr. Letchinger:

We represent Luna Carpet and Blinds Co., Inc. ("Luna") and are in receipt of the above referenced letter. We respectfully disagree with your allegations and conclusions.

In your letter you allege that Luna has purchased your client's trademark as a Yahoo and Google adword. To support your allegation, you have provided a printout of a Google search for "empire carpet" showing that Luna appears as a sponsored link. We have run and provided for your reference a Google search for the "luna carpet" mark showing your client, Empire Today, as a sponsored link. Note that the mark LUNA is a registered trademark (Reg. No. 3301575) of Luna. Further, attached are searches for only the "carpet" mark which places both Luna and your client on a sponsored link result and "empire" which only places your client on a sponsored link result. As such, based on this evidence, it is not clear that your client's allegations are accurate. Notwithstanding, if they are accurate as to Luna, note that your client is purchasing adwords for the "Luna Carpet" search term which you allege is unlawful. As such, it is clear that your client has unclean hands in this matter.

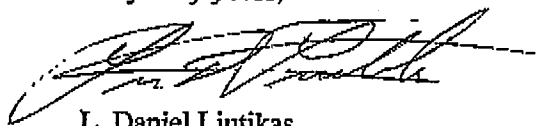
Regardless of the preceding, we are unaware of any statutes, common law, or interpretations of the Lanham Act which makes the purchase of search engine adwords, which are registered or common law trademarks of a party, unlawful. In fact, it appears that the law in this area does not support your assertions. To the extent there are cases which address this issue, it appears that such adword purchases were not considered a trademark "use in commerce" and, as such, could not be considered a trademark infringement. In addition, we do not believe that any likelihood of confusion would result as the purchased adword is not used in connection with the sale of any goods or services but rather produces a search engine result which may include any number of similarly situated merchants.

M U C H S H E L I S T

John S. Letchinger, Esq.
Wildman, Harrold, Allen & Dixon LLP
March 13, 2008
Page 2

We believe this resolves any concerns you may have. If you have any questions, please contact us directly.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. Daniel Liutikas", with a horizontal line drawn through the middle of the signature.

L. Daniel Liutikas

LDL:jc

Enclosure

Luna carpet - Google Search

Page 1 of 2

[Web](#) [Images](#) [Maps](#) [News](#) [Shopping](#) [Gmail](#) [more ▾](#)[My Notebooks](#) | [Web History](#) | [My Account](#) | [Sign out](#)

Google

Luna carpet

[Advanced Search](#)
[Preferences](#)[Web](#) [Shopping](#)Results 1 - 10 of about 350,000 for [Luna carpet](#). (0.38 seconds)[Empire Today](#)www.empiretoday.com
(1/28/08-3/9/08)

50% Off Select Products During Our Sale!

Sponsored Link

Sponsored Links

[Children's Supplies](#)Decorate Your Dream Nursery.
Explore Children's Supplies!
Shopzilla.com/Children'sSuppliesProduct search results for Luna carpet[Luna Carpet](#) \$145.00 - Moolka[Haba Luna Carpet](#) \$142.50 - BabyRide[Haba Luna Carpet](#) \$154.99 - Gompa Toys[See Luna Carpet results available through Google Checkout](#)[Luna Carpet, Hardwood, Laminate Flooring - Chicago, IL | Luna.com](#)Chicago's Flooring Experts Since 1958 - Low Price Guarantee, Lifetime Installation
Warranty on Carpet, Hardwood and Laminate.www.luna.com/ - 22k - Cached - Similar pages - [Note this](#)["A Fuller Moon" - Luna Carpet to Expand its Market This Fall](#)Luna Carpet's expansion into retail dramatizes how Luna has reinvented itself since
Salamon DeZara arrived in America from Istanbul, Turkey, in 1956, ...www.luna.com/About-Luna/InYourNeighborhood/NapervilleSunArticle.aspx - 16k -Cached - Similar pages - [Note this](#)[Battle of the Jingles: Empire Carpet vs. Luna Carpet - jotsheet](#)To you Chicagoans (and beyond, actually, since Empire sells in the Midwest): Who has the
better jingle, Empire Carpet or Luna Carpet? ...underscorebleach.net/jotsheet/2006/04/luna-empire-carpet-jingles - 36k -Cached - Similar pages - [Note this](#)[Luna Carpet & Blinds - Bellwood, IL 60104 - Citysearch](#)Come to Citysearch to get information, directions, and reviews on Luna Carpet & Blinds
and other Carpeting Companies, Blind and Drapery Stores, ...[Map of 10 Davis Dr, Bellwood, IL 60104](#)chicago.citysearch.com/profile/44438028/bellwood_il/luna_carpet_blinds.html - 63k -Cached - Similar pages - [Note this](#)[Luna Carpet & Blinds - Bellwood, IL 60104 - Reviews: Carpet & Rug ...](#) - 2 visits - Jan 21Read 7 Reviews of Luna Carpet & Blinds in Bellwood, IL. Had a salesguy come out.. he
was fine. He did admit that the Buy One room Get one Free doesn't work ...[Map of 10 Davis Dr, Bellwood, IL 60104](#)www.insiderpages.com/b/5712676094 - Similar pages - [Note this](#)[Carpet Stores - Luna Carpet 10 N Davis Dr Bellwood IL](#) - 2 visits - 11/18/07

Google

empire

Search

Advanced Search
Preferences

Web Books Video

Results 1 - 10 of about 216,000,000 for **empire** [definition]. (0.05 seconds)

Empire Today

www.empiretoday.com 50% Off Select Products During Our Sale! (1/28/08-3/9/08)

Sponsored Link

Empire - Wikipedia, the free encyclopedia

An **empire** (from the Latin "imperium", denoting military command within the ancient Roman government) is a state that extends dominion over populations ...

en.wikipedia.org/wiki/Empire - 81k - Cached - Similar pages

Roman Empire - Wikipedia, the free encyclopedia

The Roman **Empire** is the phase of the ancient Roman civilization characterized by an autocratic form of government. The Roman **Empire** succeeded the ...

en.wikipedia.org/wiki/Roman_Empire - 228k - Cached - Similar pages

More results from en.wikipedia.org »

Empire HealthChoice Assurance, Inc.

Anthem Blue Cross and Blue Shield offers affordable solutions for your health, medical, dental, pharmacy, vision and life insurance needs.

www.empireblue.com/ - 12k - Cached - Similar pages

See results for: **empire paintball**

Empire Paintball

Manufacturer of the Mini **paintball** gun, Reloader B, apparel, and accessories.

Features online catalog and images.

www.empirepaintball.com/

Empire Paintball Barrels - Online Paintball Store

Empire Paintball Barrels - #1 Online **Paintball** Store. Find **Empire Paintball**

Barrels at guaranteed low prices. Choose from a huge selection of **Empire** ...

www.sakworldpaintball.com/empaba.html

MySpace.com - Empire Paintball - 33 - Male - Sewell, NEW JERSEY ...

MySpace profile for **Empire Paintball** with pictures, videos, personal blog,

interests, information about me and more.

www.myspace.com/official_empire_paintball

Welcome to Empire Comfort Systems ®

Empire Comfort Systems offers a full link of fireplace and gas hearth products, gas logs, residential zone heaters, commercial/industrial heating appliances ...

www.empirecomfort.com/ - 35k - Cached - Similar pages



Kasabian - Empire

- **Empire**...First single from the band's second album, August ...

5 min - ☆☆☆☆

www.youtube.com/watch?v=aSKxXu05aOE

Empire (2002)

Directed by Franc. Reyes. With John Leguizamo, Peter Sarsgaard, Denise Richards. Visit IMDb for Photos, Showtimes, Cast, Crew, Reviews, Plot Summary, ...

Google

carpet

Search

Advanced Search
Preferences

Web Shopping

Results 1 - 10 of about 116,000,000 for **carpet** [definition]. (0.10 seconds)**Luna Carpet Sale**

www.Luna.com "Love Your Carpet" Sale 1/25-3/16 50% Off Lowest Price Guaranteed.

Sponsored Links

Sponsored Links

Empire Today

www.EmpireToday.com No Payments Til April 2009! Visit Our Website For Details.

Stainmaster Carpet

Stainmaster.com The Savvy Home Design newsletter is the place for beautiful home design

Discount CarpetCarpet, tile, rugs, and laminate.
12 Chicago locations.
www.olsonrug.com
Chicago, IL**Shaw Floors: Carpets, Hardwoods, Ceramic, Laminates and Area Rugs ...**Shaw is a leading manufacturer of a wide variety of flooring. Top quality carpet, area rugs, ceramic tile, hardwoods, and laminate flooring in an array of ...
www.shawfloors.com/ - 24k - Cached - Similar pages**Shaw Carpets in a Variety of Colors and Textures - ShawFloors.com**Shaw is the world's largest producer of carpets, with many styles of loops, patterns, textures, and twists. Explore our exclusive collections.
www.shawfloors.com/carpet - 36k - Cached - Similar pages**FLOR™ Carpet Squares**Wake up any room in an afternoon
Design it, See it, Buy it online.
www.FLOR.com/CarpetSquare**Mohawk Flooring**Your complete flooring solution.
Visit now to explore your options.
www.Mohawk-Flooring.com**Carpet.org - The best place on the web for carpet**Learn everything you need to know about carpet (ie what to buy, how to clean, which retailer to use, etc.)
www.carpet.org/ - 5k - Cached - Similar pages**Carpet - Wikipedia, the free encyclopedia**A carpet is any loom-woven, felted textile or grass floor covering. The term was also used for table and wall coverings, as carpets were not commonly used ...
en.wikipedia.org/wiki/Carpet - 63k - Cached - Similar pages**DirectBuy - Buy Carpet at Manufacturer-Direct Prices at DirectBuy ...**DirectBuy allows you to buy discount carpeting at wholesale prices. Buy direct from the manufacturer. Wholesale carpet from name-brand manufacturers.
www.directdiscountcarpet.com/ - 14k - Cached - Similar pages**Mohawk Flooring - Carpeting - Area rugs, Carpeting, Carpet ...**As one of the world's largest floor covering manufacturers and distributors, Mohawk takes great pride in providing the highest quality products to meet all ...
www.mohawk-flooring.com/carpeting/default.aspx - 36k - Cached - Similar pages**Carpet.net - Wholesale Carpet Direct from the Manufacturer ...**A real Discount Wholesale Carpet Dealer in Dalton, Georgia where you can save 30% to 60% on Shaw, Mohawk and all other major brands of flooring.
www.carpet.net/ - 10k - Cached - Similar pages**Carpeting Contractors**Get matched to local Carpet contractors for your home improvement projects. ServiceMagic's network of Carpet contractors are prescreened and customer-rated.
www.servicemagic.com/category/Carpet.10313.html - 48k - Cached - Similar pages**Discount carpet, buy carpet online at discount carpet prices****Carpet**Chicago's Stainmaster Flooring
& Large In-Stock Carpet Center
www.homecarpet1.com
Chicago, IL**Commercial Carpeting**Commercial Carpet Only. 70% Off!
Offices, Rentals, Motels & Churches
CompetitiveCommercialCarpet.com**Area Rugs For Less**Selling Area Rugs since 1874
Immediate Delivery. Free Shipping
www.OlsonRugShop.com
Chicago, IL**Flooring Price Quotes**Get free, no obligation estimates
from Qualified Flooring Contractors
www.HomeImprovementPortal.com
Chicago, IL**Rug Sale - Save 30 - 70%**Find Beautiful Rugs at Closeout
Prices & Free Shipping. Shop Now!
www.RugsDirect.com

More Sponsored Links »